

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Teresa A. Stundahl	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on May 10, 2010, in the Lida Lake Room, Government Services Center, 500 West Fir, Fergus Falls, Minnesota. The record closed at the conclusion of the hearing that day.

Nicole S. C. Hansen, Assistant Otter Tail County Attorney, 121 West Junius, Suite 320, Fergus Falls, MN 56537 appeared on behalf of Otter Tail County Human Services (County) and the Minnesota Department of Human Services (Department). Teresa A. Stundahl (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Teresa A. Stundahl remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care?

The Administrative Law Judge concludes that there is there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in Licensee's care and recommends that the Commissioner affirm the order of temporary immediate suspension.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is a resident of Fergus Falls, Minnesota, and has been a licensed provider of family child care there since 2003.¹ She has three children, ages 17, 9, and 6.

2. Licensee's home is situated on the southwest corner of Vasa Ave E and Whitford St in Fergus Falls. It is in a residential area of smaller, older homes. Licensee's home has a large, one-story addition that extends from the back of the original house perhaps 40 feet. There is a single door garage at the end of the addition.

¹ Testimony of Teresa Stundahl.

Just before the garage door is a side door that goes down some steps to a concrete patio and garage driveway to Whitford St. Beyond the end of the addition is a fenced-in play area, which extends to the alley.²

3. The side door enters into Licensee's day care room. The day care parents drop off and pick up their children through that door. Most of the day care is provided there. The kitchen is in the original part of the house. It is around a corner from the day care room and approximately 50 feet away. The day care room is not visible from the kitchen.³

4. During the morning of Friday, April 9, 2010, Licensee was providing child care to three children, all from the same family. They were four years old, three years old, and 23 months old. Under the day care statutes, the youngest would have been considered a toddler until he was 24 months old; he then would be considered a preschooler like his older siblings.⁴ For much of the morning, Licensee and the children played outside in the play area. They came in for lunch probably a little before Noon. The toddler wanted to stay out to play, but Licensee brought them all in, cleaned them up, and put them in the day care room to watch TV while she prepared lunch.⁵

5. Licensee went to the kitchen and began preparing lunch. She went to check on the children in the day care room two or three times. They were fine the first one or two times. The last time she returned to the kitchen, she was there perhaps five minutes, put food on two trays for the older children, and brought them to the day care room. The oldest child told her that the toddler had gone outside. Licensee put the trays down in front of the two older children so they could eat and ran out the side door to find the youngest child.⁶

6. Licensee looked to the right to check the play area and did not see the child there. She went to the left along the side to the front of the house. She then spotted the child across Vasa Avenue. He was standing with a neighbor in front of the neighbor's house, which was the second from the corner on the north side of Vasa Ave. In other words, the child was directly across the street from Licensee's house and several feet down the block to the left. The neighbor had seen the unattended child near his home and did not know where he belonged. He had called 911, but the police had not yet arrived. Licensee told the neighbor who the child was and took him back to her home. A few minutes later, a police officer arrived at her door.⁷

7. According to the Call for Service police report, the police officer was dispatched at 12:08 p.m. and was told by Licensee that the child "made it out of kitchen

² Testimony of Teresa Stundahl and Shana Gutzmer; Ex. 6. *See, also*, a street view of the home on Google Maps. On maps.google.com, search for 720 Whitford St, Fergus Falls. Then click on "more," then on "Street View."

³ Testimony of Shelly Bartels and Teresa Stundahl, Ex. 2.

⁴ Minn. Stat. § 245A.02, subd. 19.

⁵ Testimony of Teresa Stundahl, Ex. 4.

⁶ Testimony of Teresa Stundahl, Exs. 2 and 4.

⁷ Testimony of Teresa Stundahl, Ex. 1 at 1-2.

at day care,” that she located the child less than one minute later at the neighbor’s, and that she “will secure the door from now on.” The police officer closed the incident and became available at 12:19 p.m. On Monday, April 12, 2010, the Police Department faxed a copy of the Call for Service report to the County.⁸

8. To get from Licensee’s side door to the neighbor’s front yard by the most direct route, the child would have walked or run along the sidewalk along Whitford St to the corner, across Vasa Avenue to the opposite corner or at an angle to the left, and down the block to the front of the second house. From Google Maps, that appears to be 150 feet or more. His actual route and speed are not known.

9. Licensee testified that the child may have been out of the house for more than five minutes, but less than ten minutes, before she spotted him with the neighbor.⁹

10. When the County received the police report on April 12, 2010, Child Care Licensors Shelly Bartels and Child Protection Worker Stephanie Olson investigated by going to Licensors’ home and speaking with her. Licensee described what had happened as described above. She also told them that she had the “large door” (side door) open that day, but usually does not; that she usually puts the youngest child in the high chair, but did not that day; and that she was going to put a latch or lock on the side door, but had not. When asked by the Licensors why she does not use the dining room immediately adjacent to the kitchen during meal preparation, Licensee said that the children liked to watch their cartoons on TV during that time, so she did not want to do that.

11. The Licensors consulted with the Department about the situation and was advised by the Department to recommend to them a temporary immediate suspension of Licensee’s license. The Licensors made such a recommendation that day.¹⁰

12. On April 14, 2010, the Department issued an Order of Temporary Immediate Suspension of Licensee’s family child care license. The Order was personally served upon Licensee that day by the Licensors.¹¹

13. The Order of Temporary Immediate Suspension referred to a report regarding Licensee’s day care being under investigation by Child Protection, stated that the report was confidential because it was still under investigation by Child Protection, and stated that due to the serious nature of the report, the Commission had found that the health, safety, and rights of children in Licensee’s care were in imminent risk of harm and was immediately suspending her license. The Order also advised Licensee of her right to appeal.

14. By letter of April 18, 2010, Licensee appealed the Order of Temporary Immediate Suspension.¹² On April 19, 2010, the Department sent the Licensors the

⁸ Ex. 1 at 1-2.

⁹ Testimony of Shelly Bartels and Teresa Stundahl, Ex. 2.

¹⁰ Testimony of Shelly Bartels; Ex. 2.

¹¹ Testimony of Shelly Bartels; Ex. 3.

Notice of and Order for Hearing and other documents and instructions for handling the appeal. The Notice of and Order for Hearing was served upon Licensee by mail on April 26, 2010.

15. Since the April 9, 2010, incident, Licensee has installed a sensor on the front door that rings a bell if the door is opened. She has placed a different device on the side door that makes a noise if that door is opened. She has obtained and is ready to install a video camera and microphone that will allow her to monitor the day care room from kitchen.¹³

16. The Licensor has some concerns about whether using a video camera will provide adequate supervision of the day care children.

17. Three of Licensee's day care parents testified. Shana Gutzmer is a parent and also a substitute caregiver for Licensee. She believes that supervising the day care room from the kitchen will no longer be a problem because of the video system. She trusts Licensee with her children.¹⁴ Megan Johnson has had her children with Licensee for more than four years and has observed that Licensee is always in the same room with the children.¹⁵ Nacole Langston's child has ADHD and OCD and is constantly moving. She testified that Licensee is very good at knowing where he is at all times.¹⁶ All the parents testified to the excellent care given by Licensee. Two of them, plus two other parents, submitted letters of support to the same effect.¹⁷

18. A determination has not yet been issued on the Child Protection investigation.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50.

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.¹⁸

¹² Ex. 4.

¹³ Testimony of Teresa Stundahl.

¹⁴ Testimony of Shana Gutzmer.

¹⁵ Testimony of Megan Johnson.

¹⁶ Testimony of Nacole Langston.

¹⁷ Ex. 7.

¹⁸ Minn. Stat. § 245A.07, subd. 2

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.¹⁹

4. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings shall be limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁰ "Reasonable cause" means there exists specific articulable facts or circumstances which provide a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.²¹

5. The Commissioner has demonstrated that there is reasonable cause to believe that the license holder has either acted or failed to act in compliance with the law such that she poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

6. While the specific violation was not alleged in the Order of Temporary Immediate Suspension because of the Child Protection investigation pending at that time, it was always clear that the issue in this case was the adequacy of the supervision provided for the day care children during meal preparation. Licensee has already taken some steps to address that issue.

7. "Supervision" is defined in Minn. R. 9502.0315, subp. 29, as follows:

"Supervision" means a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.

8. The layout and use of the rooms in Licensee's home made being within sight or hearing of the toddler and two preschoolers very difficult during meal preparation. The kitchen is too remote to see or hear children in the day care room. A door to the outside is in that room. Putting locks or alarms on the door may prevent a child from leaving, or being noticed leaving, but it does nothing for hearing or seeing some other event or emergency that might arise in the room. A video camera might help, but that it does not put a caregiver within "sight or hearing" and does not make the caregiver capable of intervening in a timely manner. The Licensors' concerns are well-

¹⁹ Minn. Stat. § 245A.07, subd. 2a(a).

²⁰ *Id.*

²¹ 2010 Minn. Laws, ch. 329, art. 1, § 7.

founded. An imminent risk of harm still exists and the temporary immediate suspension should remain in effect.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services **AFFIRM** the temporary immediate suspension of Teresa Stundahl's family child care license.

Dated: May 17, 2010

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have ten calendar days to file exceptions to this Report.²² The Commissioner's final order shall be issued within ten working days from the close of the record.²³ Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

²² Minn. Stat. § 245A.07, subd. 2a(b).

²³ *Id.*